



BRB No. 17-0286 BLA  
Case No. 2015-BLA-05711

JAMES R. HOWTON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CHEVRON MINING, INCORPORATED	)	
	)	
and	)	
	)	
PITTSBURG & MIDWAY COAL MINING	)	DATE ISSUED: 08/29/2018
	)	
Employer/Carrier-	)	
Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	ORDER on
	)	RECONSIDERATION and
Party-in-Interest	)	AWARD OF FEES

As no member of the panel has voted to vacate or modify the decision herein, the motion for reconsideration filed by employer is DENIED.<sup>1</sup> 33 U.S.C. §921(b)(5); 20 C.F.R. §§801.301(b); 802.407(a); 802.409.

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<sup>1</sup> Employer argues for the first time on reconsideration that the manner in which Department of Labor administrative law judges are appointed violates the Appointments Clause of the Constitution, Art. II § 2, cl. 2. Employer’s Motion for Reconsideration at 4-6. Because employer first raised the Appointments Clause issue only after the Board issued its decision on the merits, employer forfeited the issue. *See Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044, 2055 (2018) (requiring “a timely challenge to the constitutional validity of the appointment of an officer who adjudicates [a party’s] case”); *see also Williams v. Humphreys Enters., Inc.*, 19 BLR 1-111, 1-114 (1995) (the Board generally will not

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consider new issues raised by the petitioner after it has filed its brief identifying the issues to be considered on appeal); *Senick v. Keystone Coal Mining Co.*, 5 BLR 1-395, 1-398 (1982).

Claimant's counsel, Brent Yonts, has filed a complete, itemized statement requesting a fee for services performed before the Board pursuant to 20 C.F.R. §802.203. Counsel requests a fee of \$1,156.67 for 5.78 hours of legal services at an hourly rate of \$200.00. Employer has not filed an objection to counsel's fee petition.

Upon review of the fee petition, the Board finds the requested fee to be reasonable in light of the necessary services performed, and thus approves a fee of \$1,156.00,<sup>2</sup> to be paid directly to claimant's counsel by employer.<sup>3</sup> 33 U.S.C. §928, as incorporated by 30 U.S.C. §932(a); 20 C.F.R §802.203.

BUZZARD

GREG J.

Administrative Appeals Judge

RYAN GILLIGAN  
Administrative Appeals Judge

ROLFE

JONATHAN

Administrative Appeals Judge

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<sup>2</sup> The Board corrects counsel's computation error:  $\$200.00 \times 5.78 = \$1,156.00$ .

<sup>3</sup> The Board's award in this matter is of no precedential value given that counsel's fee petition is unopposed.